INTERIOR BOARD OF INDIAN APPEALS

Pyramid Lake Paiute Tribe of Indians v. Deputy Assistant Secretary - Indian Affairs (Operations)

13 IBIA 162 (05/29/1985)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

PYRAMID LAKE PAIUTE TRIBE OF INDIANS
v.
DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS (OPERATIONS)

IBIA 84-35-A Decided May 29, 1985

Appeal from a decision of the Deputy Assistant Secretary--Indian Affairs (Operations) concerning Mining Lease No. B-140, between the Pyramid Lake Paiute Tribe of Indians and William J. Colman.

Affirmed as modified.

1. Indians: Leases and Permits: Cancellation or Revocation

   In order for an automatic termination lease provision to be upheld, it must clearly indicate that automatic termination is intended, the circumstances bringing about automatic termination, and the consequences of the termination.

2. Indians: Leases and Permits: Cancellation or Revocation

   Cancellation of an Indian lease is effective when issued, unless, as in this case, the lease specifically provides for a different effective date.

APPEARANCES: Michael R. Thorp, Esq., and James M. Hushagen, Esq., Tacoma, Washington, for appellant; Colleen Kelley, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee; Frank J. Allen, Esq., Salt Lake City, Utah, for William J. Colman. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On June 18, 1985, the Board of Indian Appeals (Board) received a notice of appeal from the Pyramid Lake Paiute Tribe of Indians (appellant). Appellant sought review of an April 13, 1984, decision issued by the Deputy Assistant Secretary--Indian Affairs (Operations) (appellee) concerning Mining Lease-Tribal Lands (For Minerals Other Than Oil and Gas) No. B-140 between appellant and William J. Colman (Colman). On September 7, 1983, the Superintendent of the Western Nevada Agency (Superintendent), Bureau of Indian Affairs (BIA), found that the lease should be canceled and that Colman owed appellant $19,280 in minimum advance royalty and annual rental for 1983.

This decision was reversed by the Assistant Phoenix Area Director, BIA, on December 9, 1983. The Assistant Area Director's decision was affirmed by appellee on April 13, 1984. The Board affirms appellee's decision on the grounds stated in this opinion.

Background

Lease No. B-140 became effective when it was approved by the Superintendent on January 25, 1982. It provided for the development of sodium reserves from the dry bed of Lake Winnemucca, which is partially located on appellant's reservation. The lease had an initial term of 10 years, with options to renew for four additional 10-year terms if Colman "fully and exactly performs and complies with all his covenants and applicable conditions herein and this lease survives for the initial ten (10) year term." Section 4. Under section 5(a), Colman agreed to pay a minimum advance royalty of $10,000 for the first year, $15,000 for the second year, and $30,000 for the third year, with adjustments based on the Consumer Price Index thereafter. Section 5(a) further stated that the "minimum advance royalty when paid shall not be refunded to the LESSEE because of any subsequent surrender or cancellation hereof." In section 6, Colman agreed to pay $4,280 in annual rent, which also was not refundable if the lease was surrendered or canceled.

Section 2(e) required Colman to have the leased premises surveyed by a registered surveyor, post the boundaries with substantial monuments, and establish a tie with the nearest United States Public Survey marker within 180 days of approval of the lease. The section further provided that upon the completion of the survey, the lease and annual rental would be amended in accordance with the surveyed determination of total acreage involved.

Under section 14 Colman was required to make diligent efforts toward development of the lease. Section 14(a) stated that the lessee "shall not hold the land for speculative purposes, but in good faith for mining," and required start of production within 2 years. Section 14(c) required Colman to remove a minimum of 50,000 tons of material per lease year, beginning in the third year of the lease. The lessee agreed to expend at least $50,000 per year in development costs during the first 2 years.

Section 20 of the lease gave the tribe, the Superintendent, and the District Mining Supervisor, Geological Survey, Phoenix, Arizona, authority to inspect the mining operations to determine compliance with the lease terms. If the inspection revealed that Colman was not in compliance, sections 20(c) and (d) required that a notice of noncompliance be served upon Colman, stating the respect in which he failed to comply with the terms and setting out a time period in which action must be taken to correct the problem.

Section 31 provided procedures to be followed in the event the lessee surrendered or terminated the lease. Section 32 dealt with penalties, cancellation, forfeiture, and appeals.

Although Colman paid the minimum advance royalty and annual rent for 1982, the record shows that he did nothing else toward the development of the lease during the first year. He did not comply with the requirement

of section 2(e) regarding surveying, or the requirement of section 14(c) to expend $50,000 in development costs. The BIA contacted Colman by letters dated June 9, 1982; August 6, 1982; February 4, 1983; and June 8, 1983, regarding these failures.

By letter dated August 2, 1983, the Superintendent informed Colman that he was in default under the lease for four reasons: (1) failure to pay the 1983 minimum advance royalty; (2) failure to pay the 1983 annual rent; (3) failure to furnish a survey of the property; and (4) failure to expend $50,000 in development costs for the first year of the lease. Colman was given 10 days in which to show cause why the lease should not be canceled. When Colman did not respond to the notice of noncompliance, he was given, by letter dated August 16, 1983, until the close of business on September 6, 1983, to cure these violations, or the lease would be canceled. Colman did not cure the violations, and the lease was canceled on September 7, 1983.

On October 6, 1983, Colman filed a notice of appeal from the cancellation decision. Colman's brief in support of the appeal was received by BIA on November 8, 1983. The cancellation decision was reversed by the Assistant Area Director, Phoenix, on December 9, 1983.

Appellant sought review by appellee, who, on April 13, 1984, affirmed the Assistant Area Director's decision. The present appeal was received by the Board on June 18, 1984. Briefs on appeal have been filed by appellant, appellee, and Colman.

Discussion and Conclusions

On appeal, both appellee and Colman argue that Colman is not liable to appellant for the payment of any advance royalties and rentals because under section 14(c), the lease automatically terminated when Colman failed to expend the required $50,000 in development costs during the first year of the lease. 1/ The language at issue is:

> In the event that the LESSEE in either of the first two lease years fails to expend the said $50,000.00 in development costs

---

1/ Contrary to Colman's statements in his brief to the Board at pages 1-2, it has not been held "[a]t every stage of the adjudication and review process * * * that the Lease terminated automatically at the end of the first Lease year pursuant to Section 14(c)." The Superintendent, who is part of the adjudicatory process, canceled the lease; he did not find that the lease had automatically terminated under its own provisions. It is at least interesting that Colman did not raise this argument in his appeal from the Superintendent's cancellation of the lease. On page 1 of his Nov. 7, 1983, appeal memorandum, Colman specifically stated that he did "not protest the cancellation of the Lease, but only the claim, finding or the conclusion of the Bureau that [he] ha[d] an obligation to pay $19,280.00 in rentals and royalties for the 1983 calendar year." The basis for his contention was that he reasonably believed that the lease had been canceled in the first year because of problems with the survey requirements. Colman first embraced the automatic termination argument after it formed the basis for the Assistant Area Director's decision.

> or that the LESSEE starting with the third lease year does not remove each lease year the said minimum 50,000 tons of material which minimum quantities of material are required to be removed for the next year, except when operations may be interrupted by strikes, the elements, or casualties not attributable to the LESSEE, then the lease shall terminate at the end of the lease year in which the LESSEE fails to remove or fails to expend the minimum amount specified. Only if LESSEE fully and exactly performs and complies with all his covenants and applicable conditions herein shall this lease continue to be effective for a maximum initial term of ten (10) years.

Appellee raises two primary arguments in support of his automatic termination interpretation of section 14(c). 2/ He first argues that only this interpretation gives meaning to the words "shall terminate" and to the last sentence of the section which states that the lessee must "fully and exactly" perform all of the covenants of the lease in order for it to remain in effect for the maximum initial 10-year term. Appellee next asserts that a conditional limitation is clearly expressed by this section.

Both of appellee's arguments are thus based on the clarity of the language of section 14(c). The Board agrees with appellee that contracting parties can create a conditional limitation, or any other kind of limitation, if their intention to do so is clearly shown. The Board cannot, however, accept the argument that the language of section 14(c) clearly shows the parties' intentions.

2/ The Board does not give weight to appellee's suggestion that automatic termination was intended under the language of section 14(c) because it was in the best interest of the Indians to have the lease ended expeditiously, without resort to the elaborate cancellation procedures set forth in such regulations as 25 CFR 162.14 and 211.27. The regulatory cancellation procedures are intended to ensure both parties to an Indian lease that they will be accorded due process should problems arise in the performance of the lease. Such procedures constitute an important element of these leases and an incentive for entering into a lease with an Indian or Indian tribe. The Department's right to supervise and cancel Indian leases has been questioned in the past. See Racquet Drive Estates, Inc. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 184, 90 I.D. 243 (1983), and cases cited therein. The existence of the cancellation regulations has been partially responsible for the courts' upholding of the Department's authority in this matter because they help ensure due process. See, e.g., Yavapai-Prescott Indian Tribe v. Watt, 528 F. Supp. 695, 698 (D. Ariz. 1981). Cf. Coomes v. Adkinson, 414 F. Supp. 975 (D.S.D. 1976) on the general issue of assurance of due process during Departmental Indian proceedings.

It is in the best interest of the Indians to enter into leases that are clearly written to reflect the understanding of all parties, and that provide adequate safeguards against overreaching by either side. It is also in the best interest of the Indians to obtain assistance from BIA and the Department's Office of the Solicitor in drafting such leases, and to receive expeditious cancellation of breached leases and expeditious review of lease cancellation decisions.

Here, doubt concerning whether the parties intended section 14(c) to constitute an automatic termination provision was raised by all three parties to the lease. Colman did not make this argument either to the Superintendent or in his appeal from the Superintendent's cancellation of the lease. In fact, he did not even question the Superintendent's statement that the lease was being canceled. Instead, he questioned the timing of the cancellation, indicating his belief that the lease had been canceled earlier, before his obligation arose to pay the amounts assessed by the Superintendent. The fact that the lessee did not raise this argument, which is clearly to his advantage, strongly suggests that he had not understood the provision to require an automatic termination.

Furthermore, the Superintendent, who had approved the lease, did not interpret section 14(c) as an automatic termination provision. Instead, when there was a violation of that section, the Superintendent proceeded under the lease cancellation provisions.

Finally, appellant states that it did not understand section 14(c) to provide for the automatic termination of the lease. It seems unlikely that the parties to this lease understood section 14(c) to have the meaning ascribed to it in appellee's decision when each of them took actions and presented legal arguments totally inconsistent with that interpretation. 3/

In addition, appellee's automatic termination argument on its face leads to apparently unintended results. As presented, the argument would mean that the lease terminated when Colman failed to expend any money at all in development costs, as was the case here. It would also mean, however, that the lease would terminate if Colman expended only $49,999.99 in development costs. There would be no opportunity for Colman to argue substantial performance or for the tribe to excuse a minor shortage. Absent clear and express evidence to the contrary, the Board will not find that such a result, which would not represent either the apparent intention of the parties or sound business judgment, is required.

[1] The Board does not here disapprove all automatic termination provisions. It does hold that in order for such provisions to be upheld, they must clearly indicate that automatic termination is intended, the circumstances bringing about automatic termination, and the consequences of the termination. In short, such provisions must be free from doubt. See 6 Corbin, Contracts, § 1266 (1962); 17 Am. Jur. 2d, Contracts §§ 499-500 (1964); 49 Am. Jur. 2d, Landlord & Tenant § 992 (1964).

The language of section 14(c) allows another interpretation that gives full meaning to all of its terms. Although the lease does not explicitly state that time is of the essence in its performance, section 14 is merely one of the sections that indicate the tribe's intent that the lease be fully performed in a timely manner. Section 14(c) indicates that the lessee is

_____

3/ "In the construction or interpretation of contracts, the primary purpose and guideline, and indeed the very foundation of all the rules for such construction or interpretation, is the intention of the parties." 17 Am. Jur. 2d, Contracts § 244 (1964).

expected to make certain expenditures in order to retain his rights under the lease. However, the fact that failure to make those expenditures can result in the loss of the lessee's rights does not require the legal conclusion that those rights are lost through the automatic termination of the lease. The words of section 14(c) are given meaning if they are interpreted as expressing the parties' intentions that the lease will be canceled if the lessee does not fully and timely perform the requirements addressed in that section, and that the lease cancellation will be effective at the end of the lease year in which the lessee fails to make the required expenditure.

The Board thus finds that section 14(c) does not clearly provide for automatic termination of the lease, but rather may be construed to mean that failure to make the required expenditure for development constitutes a breach of the lease that will be addressed through the procedures for lease cancellation. If the lease is canceled for the reasons stated in section 14(c), the cancellation is effective at the end of the lease year in which the lessee failed to make the required expenditure or removal.

Appellee's decision does not address the undisputed chronology of this case. Colman first failed to survey the leased premises as required. Then he failed to make the required development expenditure. Appellee's decision, by never considering the question of surveying, seems to excuse Colman's apparent prior breach of the lease on the basis of an alleged later termination resulting from Colman's failure to perform another lease requirement. The failure to perform the survey, which, as Colman himself argues, was an essential part of the lease, would be grounds in and of itself for lease cancellation.

Colman has consistently stated that his failure to make expenditures for development resulted from appellant's and BIA's unreasonable demands related to surveying the leased premises. The leased area is a dry lake bed, which apparently varies in wetness depending upon many circumstances, and which, consequently, has a shifting surface. Colman argues that there was a mutual mistake of fact as to the feasibility of marking the boundaries of the leased premises with substantial markers. 4/ He further alleges that he informed BIA of the problems during the first lease year and that either BIA or appellant was unwilling to consider those problems or to modify the lease to allow another method of marking the surveyed boundaries. A memorandum in the file from the Superintendent disputes Colman's allegations.

Colman raises factual questions concerning whether his failure to make the required development expenditures was the direct result of either a mutual mistake of fact as to the feasibility of the survey requirements or the impossibility of performing the lease as written. Under other circumstances, the Board would refer this matter to the Hearings Division of the

_____

4/ Colman also argues that the necessity for markers was discussed during the lease negotiations, and that it was his understanding that such markers would not be required. The lease plainly mandates substantial markers in section 2(e). Parol evidence of prior negotiations, as distinguished from an argument of mutual mistake, will not be accepted to contradict the plain language of the lease. See Restatement (Second) of Contracts § 215 (1981); 3 Corbin, Contracts § 573 (1963); 4 Williston, Contracts § 631 (3rd ed. 1957).

Office of Hearings and Appeals for assignment to an Administrative Law Judge to conduct an evidentiary hearing and issue a recommended decision on the factual and legal questions raised. Colman, however, does not now challenge, and has not previously challenged, the decision to cancel this lease. He questions only the determination that he owes appellant $19,280. Therefore, the grounds for the cancellation are rendered immaterial and the only real question on appeal is the time at which the cancellation became effective.

Appellee appeared to address this question by saying that the lease automatically terminated at the end of the first lease year when the required development expenditure was not made. This determination would mean that Colman's obligation to pay advance royalties and rentals for the second lease year never arose, because section 4, dealing with royalties, and section 5, concerning rentals, make the payments for the ensuing year due on the anniversary date of the lease and at the beginning of the lease year, respectively. Thus, if the lease terminated at the end of the first lease year, no payments were due to appellant because the termination predated the due dates for those payments.

[2] If the lease had been canceled only for failure to conduct the survey and pay the advance rental and royalty, the cancellation decision would be effective as of its date. Here, however, the lease was also canceled for failure to make the required development expenditure. The Board has already concluded that if the lease were canceled under section 14(c), the cancellation would be effective at the end of the lease year in which the required expenditure was not made. In this case, the lease year in which the required expenditure was not made was the first year. Thus, despite the fact that the cancellation decision was not made until later, in the second year of the lease, the cancellation relates back to the time specified in section 14(c). Because of this fact, Colman's obligation to pay advance rentals and royalties for lease year 1983 did not arise.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the April 13, 1984, decision of the Deputy Assistant Secretary--Indian Affairs (operations) is affirmed to the extent that it held that William J. Colman is not liable for the payment of $19,280 to the Pyramid Lake Paiute Tribe of Indians, for the reasons expressed in this opinion.

//original signed
Anne Poindexter Lewis
Administrative Judge

We concur:

//original signed
Jerry Muskrat
Administrative Judge

//original signed
Bernard V. Parrette
Chief Administrative Judge